

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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PETALS DECORATIVE ACCENTS LLC,	: Index No. 07CV8120(HB)
	:
Plaintiff,	:
	:
-against-	: <b><u>AMENDED REPLY TO</u></b>
	: <b><u>COUNTER-CLAIMS</u></b>
	:
THE ELEVATION GROUP LLC, CONTROL	:
SOLUTIONS INC., IMAGESOFT INC., TONY	:
YENIDJEIAN and DINESH BAKHRU,	:
	:
Defendants.	
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Plaintiff, PETALS DECORATIVE ACCENTS LLC, (hereinafter "Petals" or "Plaintiff") by its attorneys, Gersten Savage, LLP, as and for its amended reply to the Counter-Claims asserted by defendant THE ELEVATION GROUP LLC (hereinafter "Elevation"), alleges as follows:

**FIRST COUNTER-CLAIM FOR BREACH OF CONTRACT**

1. Denies the allegations set forth in paragraph 1 except admits that in or about June 2006, the Plaintiff and Elevation entered into an agreement pursuant to which the Plaintiff retained Elevation to design and implement and all-encompassing computer system for Petals.
2. Admits the allegations set forth in paragraph 2.
3. Admits the allegations set forth in paragraph 3.
4. Denies the allegations set forth in paragraph 4.
5. Denies the allegations set forth in paragraph 5.
6. Denies the allegations set forth in paragraph 5 except admits that Elevation provided Petals with invoices requesting payment.
7. Denies the allegations set forth in paragraph 7.

8. Denies the allegations set forth in paragraph 8.
9. Denies the allegations set forth in paragraph 9.
10. Denies the allegations set forth in paragraph 10.
11. Denies the allegations set forth in paragraph 11 except admits that Elevation is apparently seeking judgment against Petals.

**SECOND COUNTER-CLAIM FOR UNJUST ENRICHMENT**

12. Denies the allegations set forth in paragraph 12.
13. Denies the allegations set forth in paragraph 13.
14. Denies the allegations set forth in paragraph 14.
15. Denies the allegations set forth in paragraph 15.
16. Denies the allegations set forth in paragraph 16 except admits that Elevation is apparently seeking judgment against Petals.

**THIRD COUNTER-CLAIM FOR BREACH OF THE COVENANT OF  
GOOD FAITH AND FAIR DEALING**

17. Denies the allegations set forth in paragraph 17.

**AFFIRMATIVE DEFENSES**

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

18. Elevation's counter-claims are barred by the doctrines of laches, unclean hands, estoppel and waiver.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

19. Elevation's counter-claims fail to state a claim upon which relief can be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

20. Elevation's counter-claims are barred by the statute of frauds.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

21. Elevation's counter-claims are barred due to a lack of consideration.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

22. Elevation's counter-claims are barred by reason of Elevation's material breach of contract.

**WHEREFORE**, plaintiff, Petals Decorative Accents LLC, demands judgment in its favor and against the defendant/counter-claimant, The Elevation Group LLC, dismissing the counter-claims in their entirety with prejudice and awarding attorneys' fees and costs as well as such other and further relief as this Court deems equitable and just.

Dated: November 21, 2007

GERSTEN SAVAGE, LLP  
Attorneys for Plaintiff

By: 

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David Lackowitz (DL 8591)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of November, 2007, a true and correct copy of the foregoing Amended Reply to Counterclaims was served electronically upon the Court and the following counsel:

Paul G. McCusker, Esq.  
McCUSKER, ANSELM, ROSEN &  
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and by certified mail, return receipt requested, on:

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By:   
David Lackowitz (DL-8591)

Dated: November 21, 2007